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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re : **Chapter 11**
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SEARS HOLDINGS CORPORATION, et al., : **Case No. 18-23538 (RDD)**
:
Debtors.¹ : **(Jointly Administered)**
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**STIPULATION, AGREEMENT, AND ORDER
RESOLVING LIMITED OBJECTION OF LIBBY DIAL
ENTERPRISES, LLC TO STORE CLOSING PROCEDURES**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

This stipulation, agreement, and order (the “**Stipulation, Agreement, and Order**”) is entered into by and between Kmart Corporation (“**Kmart**”), as debtor and debtor-in-possession in the above captioned chapter 11 cases, and Libby Dial Enterprises, LLC (“**Libby**”). Kmart and the Libby are collectively referred to in this Stipulation, Agreement, and Order as the “**Parties**” and each as a “**Party**.” The Parties hereby stipulate and agree and follows:

RECITALS

A. On October 15, 2018 (the “**Commencement Date**”) and continuing thereafter, Kmart and its debtor affiliates (collectively, the “**Debtors**”), each commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”). The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. On December 28, 2018, the Debtors filed the *Notice of Intent to Conduct Store Closing Sales* (ECF No. 1444) (the “**GOB Sales Notice**”) identifying, among others, Kmart store number 7062, located at 1143 Broad Street in Sumter, South Carolina (the “**Kmart Store**”), as a store in which the Debtors intend to commence Store Closing Sales.²

C. On January 7, 2019, Libby filed the *Limited Objection of Libby Dial Enterprises, LLC to Store Closing Procedures* (ECF No. 1503) (the “**Objection**”).

² Terms not otherwise defined herein shall have the meaning ascribed to them in the GOB Sales Notice.

D. The Parties have agreed, subject to approval by the Bankruptcy Court, to resolve the Limited Objection pursuant to the terms set forth in this Stipulation, Agreement, and Order.

NOW, THEREFORE, UPON THE FOREGOING RECITALS, WHICH ARE INCORPORATED AS THOUGH FULLY SET FORTH HEREIN, IT IS HEREBY STIPULATED AND AGREED, BY AND BETWEEN THE PARTIES, THAT:

AGREEMENT

1. The Parties have agreed that the Debtors may conduct a Store Closing Sale without any delay at the Kmart Store, which is subject to a Lease dated, November 25, 1974, between David Baker and Lee J. Baker, as predecessor landlords, and S.S. Kresge Company, as predecessor tenant (together with amendments, the “**Lease**”).

2. The Parties agree that all further rights of the Debtors and Libby are not affected in any manner by the agreement in paragraph 1 herein, and all Parties reserve all of their respective rights to enforce their rights under the Lease.

3. Libby hereby agrees to withdraw the Objection with prejudice to reflect the agreement in paragraph 1 that allows the Debtors to conduct a Store Closing Sale at the Kmart Store without any delay.

4. Libby hereby agrees to withdraw the remaining portions of the Objection, particularly but not limited to those portions concerning Libby’s rights to terminate the Lease, without prejudice.

5. This Stipulation, Agreement, and Order shall be filed and become part of the record in the Debtors’ chapter 11 cases.

6. Each person who executes this Stipulation, Agreement, and Order on behalf of a Party hereto represents that he or she is duly authorized to execute this Stipulation, Agreement, and Order on behalf of such Party.

7. This Stipulation, Agreement, and Order may be executed simultaneously in one or more counterparts, and by the parties hereto in separate counterparts, and with facsimile or pdf signatures being deemed originals, each of which when executed shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

8. The terms and provisions of this Stipulation, Agreement, and Order shall be immediately effective and enforceable.

9. This Stipulation, Agreement, and Order, and all of the provisions hereof shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and assigns.

10. This Stipulation, Agreement, and Order may not be modified, altered, amended or vacated in any way except by a writing signed by the parties hereto.

11. This Stipulation, Agreement, and Order shall be governed by, and construed in accordance with, the laws of the State of New York, except to the extent that the Bankruptcy Code applies, without regard to principles of conflicts of law that would require the application of laws of another jurisdiction. The Bankruptcy Court shall retain jurisdiction to resolve any disputes or controversies arising from this Stipulation, Agreement, and Order.

By: /s/ Jacqueline Marcus

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SO ORDERED THIS
18th DAY OF July, 2019

/s/Robert D. Drain
HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE